QUESTIONS PRESENTED

1. Whether enforcement of the Origination Clause of the Constitution, Art. I, § 7, cl. 1 presents a nonjusticiable political question?

2. Whether 18 U.S.C. § 3013, which directs the federal courts to impose special assessments on defendants convicted of federal offenses, was enacted in violation of the Origination Clause of the Constitution, Art. I, § 7, cl. 1?

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, § 7, cl. 1 of the United States Constitution requires:

> All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Title 18, United States Code, § 3013, as enacted by the Victims of Crime Act of 1984, Pub. L. No. 98-473, Title II, ch. XIV, § 1405, 98 Stat. 2174-2175, provided:

> § 3013. Special assessment on convicted persons
>
> (a) The court shall assess on any person convicted of an offense against the United States—
>
> (1) in the case of a misdemeanor—
>
> (A) the amount of $25 if the defendant is an individual; and
>
> (B) the amount of $100 if the defendant is a person other than an individual; and
>
> (2) in the case of a felony—
>
> (A) the amount of $50 if the defendant is an individual; and
>
> (B) the amount of $200 if the defendant is a person other than an individual.
>
> (b) Such amount so assessed shall be collected in the manner that fines are collected in criminal cases.[1]

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[1] 18 U.S.C. § 3013 was amended by Pub. L. No. 100-185, § 3, Dec. 11, 1987, 101 Stat. 1279, and by Pub. L. No. 100-690, Title VII, §§ 7082(b), 7085, Nov. 18, 1988, 102 Stat. 4407, 4408.

The December 1987 amendments added subsections (c) and (d) providing that the obligation to pay an assessment ceases five years after the date of the judgment and that an offense under section 13 of

SUMMARY OF ARGUMENT

1. The Court of Appeals correctly decided that the Origination Clause is subject to judicial review and does not present a nonjusticiable "political question." An analysis of the factors set forth in *Baker* v. *Carr*, 369 U.S. 186 (1962), compels the conclusion that judicial interpretation of the Origination Clause is not precluded by the political question doctrine. Nothing in the text of the Constitution commits to Congress the sole authority to decide whether an act violates the Origination Clause. Congress has relied on judicial interpretations in deciding whether a bill violates the Origination Clause. Interpreting the Origination Clause does not require the Court to make policy determinations. The ability of the House to protect and assert its prerogative under the Origination Clause cannot preclude the Court from performing its historical function of interpreting the Constitution. The Origination Clause is not simply a rule of parliamentary procedure or

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Title 18, United States Code (the Assimilative Crimes Act) is an offense against the United States. The five year limitation provided in subsection (c) is shorter than the twenty year statute of limitations applicable to fines. See 18 U.S.C. § 3565(h) (1985), repealed and replaced by 18 U.S.C. § 3613(b) (1987). The provision regarding applicability to Assimilative Crimes under 18 U.S.C. § 13 was added in order to overturn court decisions that had held the assessment not applicable to such convictions. H.R. Rep. No. 100-390, at 4.

The November 1988 amendments changed the amounts of the assessments applicable to various levels of cases and specified that the five year statute of limitations applies to all assessments regardless of the date of imposition. Pub. L. No. 100-690, § 7085, 102 Stat. 4408.

Neither the December 1987 nor November 1988 amendments altered the directive in section 3013(a) that the court *shall* assess the applicable amount on any person convicted of an offense against the United States.

only a "matter of sequence"; it is a constitutional rule of accountability for revenue legislation as well as a balance of the power between the House and Senate. The Clause provides direct protection to individual citizens by insuring that the representatives most directly responsive to the people take the responsibility of taking money from the people through taxation. Judicial interpretation of the Origination Clause presents no more danger of "multifarious pronouncements" than in any instance where a court reviews a law.

2. Section 3013 violates the Origination Clause.

a. The purpose of section 3013 is to raise revenue for the general obligations of government. Even if the purpose of section 3013 is a more limited or "special" purpose, it is not exempt from the Origination Clause. The funds are not designed to benefit the class of individuals levied against and are not used to offset costs of a service that benefits those individuals who pay the charge. *See Millard* v. *Roberts*, 202 U.S. 429 (1906); *Twin City Nat'l Bank* v. *Nebecker*, 167 U.S. 196 (1897); *United States* v. *Norton*, 91 U.S. 566 (1875). Finally, section 3013 is not a penalty provision. It is not located in any sentencing provision of Title 18, nor is it a viable sentencing option for federal judges. The statute does not refer to penalty assessments, but rather, to *special* assessments.

b. Section 3013 originated in the Senate. The Senate was the first body to place the special assessment provision into the legislation that was ultimately enacted. On September 25, 1984, the House passed H.R.J. Res. 648, without a special assessment provision. On October 4, 1984, the Senate amended H.R.J. Res. 648, adding the special assessment provision. The fact that the provision the Senate inserted into H.R.J. Res. 648 was identical to

Respondent recognizes, as he must, that the special assessments are to be deposited in the Crime Victims Fund, but he maintains that the special assessment provision is a "Bill[] for raising Revenue" because (1) the Fund should be considered a general expenditure of government; (2) the special assessment provision itself does not express a purpose; and (3) even if providing money for the Victims Fund is the primary purpose and the Fund is not a general expenditure of government, there is not a sufficient relationship between the people on whom the fee is imposed (persons convicted of federal offenses) and the people who benefit from the fund (victims of crime). Resp. Br. 18-23. None of these arguments is well founded.

Respondent's first argument—that the Fund should be considered a general expenditure of government—rests principally on the view that "[a]ssistance to potentially large numbers of individuals who are victims of crime should be considered a general obligation and expenditure of government." Resp. Br. 20. That view is mistaken. The size of the beneficiary class has never been the touchstone for this Court's analysis of whether legislation is a "Bill[] for raising Revenue." In *Nebeker*, for instance, this Court noted that the purpose of the legislation at issue was to benefit "the people" throughout the nation.[5] The

King, No. 89-3037 (Dec. 12, 1989); see also *United States* v. *Newman*, 889 F.2d 88 (6th Cir. 1989) (victims assistance purpose).

[5] See *Nebeker*, 167 U.S. at 203 ("The tax was a means for effectually accomplishing the great object of giving to the people a currency that would rest, primarily, upon the honor of the United States, and be available in every part of the country.").

fact that the statute in question would benefit "potentially large numbers of individuals" did not prevent the Court from finding that it was not a "Bill[] for raising Revenue." Moreover, as a matter of logic, there is no reason why the size of the beneficiary class should be related to the purpose-of-legislation test suggested both by the words of the Clause ("Bills *for* raising Revenue") and by this Court's decisions in *Millard*, *Nebeker*, and *Norton*.

Respondent's suggestion that "[n]othing on the face of section 3013 reveals its underlying purpose" (Br. 19) ignores the fact that several provisions of the Victims of Crime Act of 1984 (of which the special assessment provision was one section) reveal with unmistakable clarity that assisting victims was the principal purpose of the Act. See, *e.g.*, Pub. L. No. 98-473, § 1402, 98 Stat. 2170 (establishing the "Crime Victims Fund"); § 1403, 98 Stat. 2171 (criteria for "crime victim compensation"); § 1404, 98 Stat. 2172 (criteria for "crime victim assistance"). To the extent that respondent suggests that the special assessment provision, which was part of the Victims of Crime Act (§ 1405, 98 Stat. 2174) and integrally related to the other provisions, should be viewed in isolation from the other provisions of the Act, his argument is contrary to the "fundamental" axiom that a "section of a statute should not be read in isolation from the context of the whole Act." *Richards* v. *United States*, 369 U.S. 1, 11 (1962).

Respondent also suggests that the special assessment provision is a "Bill[] for raising Revenue" because it does not directly benefit those who pay the assessment. Resp. Br. 20-23. Here, too, respondent's theory is unsupported by this Court's precedents. Contrary to respondent's contention, *Nebeker* does

not support his proposed "relationship" test. In *Nebeker*, this Court emphasized that the nation as a whole benefited from the legislation at issue, and the fee was imposed only on banks. The language of the Origination Clause contains no suggestion that the relationship between the beneficiaries of legislation and the persons who pay a fee incident to that legislation bears on the question whether a particular bill is one "for raising Revenue."

Finally, respondent maintains that the special assessment cannot be viewed as penal in nature. Resp. Br. 23-26. Respondent contends that the purpose of the special assessment provision is simply to impose a tax on convicted persons. The assessment, however, is imposed for commission of a crime; it varies according to whether the crime is a felony or a misdemeanor; it is imposed in the same manner as a sentence; a separate assessment is imposed for each count of conviction; and the assessment is referred to in the statute as a "penalty assessment."[6] Under these circumstances, it is clear that Congress intended the special assessment to be exacted roughly according to the seriousness of the defendant's misconduct and to serve, at least in part, a penal purpose.

b. In our opening brief, we explained that the special assessment provision should be regarded as having "originated" in the House of Representatives, be-

[6] Although respondent maintains that "[t]he statute does not refer to penalty assessments" (Br. 3, 26), the Victims of Crime Act of 1984 uses precisely that language at two points. See Pub. L. No. 98-473, § 1402(b)(2), 98 Stat. 2171 (referring to the "penalty assessments collected under section 3013 of title 18 of the United States Code"); § 1405, 98 Stat. 2174 (title of special assessment section is "PENALTY ASSESSMENT").

cause the House was the first chamber to pass the measure ultimately enacted into law. The House passed the special assessment provision on October 2, 1984, seven days after it passed H.R.J. Res. 648, 98th Cong., 2d Sess., the continuing appropriations resolution; then, on October 4, 1984, the Senate combined the House-passed special assessment provision with the House-passed H.R.J. Res. 648. After H.R.J. Res. 648 emerged from conference containing the special assessment provision, the House passed that conference version on October 10, the Senate passed it on October 11, and the President signed it on October 12. Gov't Br. 23-24; Pet. 9, 17-18.

Respondent does not dispute this chronology. Resp. Br. 26-27. Instead, he argues for a rigid rule that the House of Representatives may be found to "originate" legislation for the purposes of the Origination Clause only if the House is the first chamber to place the provision in question in the particular bill that is ultimately enacted. By virtue of the chronology previously set forth (*i.e.*, because the Senate took the language of the special assessment provision from an earlier House bill and inserted it into H.R.J. Res. 648, which was thereafter enacted into law), respondent contends that the special assessment statute must be regarded as having originated in the Senate, even though the bill from which the language was taken and the bill into which it was inserted both originated in the House. Resp. Br. 27-28.[7] Respond-

[7] Respondent has abandoned the analysis of the court of appeals, which suggested (Pet. App. 13a-14a) that the special assessment provision that was enacted into law originated in the Senate because it derived from a Senate bill, S. 2423, 98th Cong., 2d Sess., which passed the Senate in August 1984. Respondent nevertheless maintains that "Senator Heinz in-

ent argues that this rule is necessary for two reasons—ease of administration and preservation of existing House practices. Neither reason withstands scrutiny.

This Court has never suggested that ease of judicial administration justifies a rigid approach to Origination Clause analysis. Recognizing the complexity and delicacy of judicial action in this field, the Court in *Nebeker* explicitly disavowed any attempt to formulate a definition of "Bills for raising Revenue" in order to simplify the process of judicial review. See *Nebeker*, 167 U.S. at 202 ("What bills belong to that class is a question of such magnitude and importance that it is the part of wisdom not to attempt, by any general statement, to cover every possible phase of the subject."). Similar caution should inform the judicial approach to the question of origination. Rather than adopting respondent's so-called "bright line test" (Resp. Br. 27), the Court should recognize that a variety of House actions may satisfy the constitutional requirement of "origination." Ease of administration is hardly an adequate justification for refusing to recognize House origination when the House is the first chamber to propose and pass a piece of legislation, the Senate combines that legislation with another House-originated measure, and the Senate and House then pass the consolidated bill. Surely

troduced the original special assessment provision on March 8, 1983" in S. 704, 98th Cong., 1st Sess. Resp. Br. 28 n.27. In fact, however, S. 704 was very different in content and structure from the provision ultimately enacted; H.R. 3498, 98th Cong., 1st Sess., in contrast, which was introduced by Congressman Rodino in 1983, is extremely close to the ultimately enacted version of the special assessment. See Gov't Br. 25 n.25.

no value or principle informing the Origination Clause justifies ignoring the fact that the House was the first chamber to pass the provision that became law. To override the House's judgment that no Origination Clause problem was presented in a particular situation should require more than the administrative convenience provided by a rule that restricts a court to looking to the first time the final statutory language was included in the particular numbered bill ultimately enacted by both Houses.

Respondent errs in asserting that our proposed test for determining origination would tie the House's hands. We do not suggest that "origination" may be found only in a sequence such as occurred in this case. Nor, contrary to respondent's contention (Br. 28), do we suggest that there is any Origination Clause flaw in the established practice by which the House refuses to consider revenue legislation initiated by the Senate but passes identical legislation and sends it to the Senate. Rather, we submit that House "origination" may be satisfied through a variety of methods, including that procedure and including a procedure such as the one in this case, where the House is the first body to pass a provision and the Senate incorporates the House proposal into a different, separately numbered bill. That approach to origination questions is consistent with the particular caution that must accompany judicial involvement in Origination Clause determinations, as well as the caution and restraint exercised by courts in considering challenges to the constitutionality of statutes.

There is an irony about respondent's "bright line" test and his argument about why that test is needed. In the first half of his brief, he argues that the Orig-

ination Clause does not pose a problem of judicially manageable standards, and that (in part by virtue of that reason) the Court should find Origination Clause challenges to be justiciable. In the second half of his brief, respondent proposes a "bright line" test that will make Origination Clause challenges more suitable for adjudication, even though it may not be responsive in many cases to the realities of the origination of legislative proposals. See Resp. Br. 27-28 ("Unless the Court follows this bright line test for determining the *origination* of a bill, there could be endless confusion over who thought of an idea first and who drafted the language."). The fact that respondent feels compelled to devise a new, mechanical test for origination that will exclude cases such as this one, in which the precise language ultimately enacted originated in the House, is strong support for the proposition that enforcing the Origination Clause is not a task for which courts are well suited.

c. In our opening brief, we explained that this Court should not find the Senate's amendment impermissible, even if it is determined that the special assessment provision was a "Bill[] for raising Revenue" and that it "originated" in the Senate, because such a conclusion would thrust this Court into the midst of the longstanding congressional dispute about whether appropriations bills are within the scope of the Origination Clause. Gov't Br. 26-29.[8] Although respondent contends that "the resolution" of this de-

[8] Respondent's suggestion (Resp. Br. 29 n.29) that the amendment issue has not been properly raised and preserved is incorrect. The issue was explicitly addressed both by the court of appeals (Pet. App. 14a) and the district court (Pet. App. 22a n.3), and it is encompassed in the question presented in our petition.

bate "is not required" here (Resp. Br. 31), his argument continues to rest on the proposition that "none of the provisions of H.R.J. Res. 648"—which of course included many appropriations provisions—"were 'revenue raising.' " Resp. Br. 30. See also *id.* at 31 ("Nothing in H.R.J. Res. 648 as it originated in the House of Representatives was *revenue raising* within the meaning of Art. I, § 7, cl. 1."). Thus, his protestations notwithstanding, respondent's challenge to the Senate's amendment requires a holding that H.R.J. Res. 648 was not a "Bill[] for raising Revenue," and thus that appropriations bills are not such bills.[9]

This Court should not endorse either position in the longstanding battle between the House and Senate over the status of appropriations bills; instead, the Court should hold that, in view of that venerable controversy, a Senate amendment to a House bill that contains appropriations provisions will not be invalidated as an impermissible exercise of the Senate's amendment power under the Origination Clause. Respondent suggests that this position is itself an endorsement of the House position that appropriations bills are "Bills for raising Revenue." Resp. Br. 30-31. There is a fundamental difference, however, between the reasons for refusing to invalidate legislation as unconstitutional, which may rest on a variety of prudential concerns, and the reasons compelling a

[9] To the extent respondent suggests that only a "portion" of the amended statute need be examined (Br. 29-30), the suggestion conflicts with this Court's analysis of the Senate's amendment powers. See *Rainey* v. *United States*, 232 U.S. 310, 317 (1914) (" 'It appears that the section was proposed by the Senate as an amendment to a bill for raising revenue which originated in the House. That is sufficient.' ").

finding of unconstitutionality. A refusal to intrude into this congressional debate would be consistent with principles of judicial deference and restraint.[10] A decision that the Senate amendment here was impermissible, in contrast, would inject this Court into an internal congressional battle, and would be inconsistent with those principles.

For the foregoing reasons, and for the reasons stated in our opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

JANUARY 1990

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[10] Cf. *Matthews* v. *Diaz*, 426 U.S. 67, 81-82 (1976) ("The reasons that preclude judicial review of political questions also dictate a narrow standard of review * * * in the area of immigration and naturalization.") (footnote omitted).

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